IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 471 OF 2006

IN

SECOND APPEAL STAMP NO. 6088 OF 2000

. . . . . .

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	**Court's or Judge's Orders**

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Mrs. Nita Solanki i/b Kiran Jain & Co. for the applicant.
Shri Narendra Jain i/b S. K. Jain for the respondent.

CORAM: S. B. DESHMUKH, J.
DATE : SEPTEMBER 15, 2006.

P. C.

1. Heard the learned counsel for the Applicant. None appears for the respondents despite service.

2. Father of the present applicant namely Martand Malhari Bhokare had filed Regular Civil Suit No.1902 of 2002 in the Court of Learned Civil Judge, Junior Division, Pune for perpetual injunction. Regular Civil Suit No.1902 of 2002 was

dismissed by the trial Court. The original plaintiff Martand Malhari Bhokare filed Regular Civil Appeal No. 451/1999 to the Court of learned District Judge, Pune. This appeal though filed on behalf of Martand Malhari Bhokare, by the present applicant, son of Martand was his power of attorney holder. This Regular Civil Appeal No. 451 of 1999 was dismissed by the first appellate court on the ground that, father of the present applicant/original plaintiff died and therefore power given to the applicant comes to an end. The present applicant, thereafter in the capacity of the power of attorney holder, as well as legal representatives filed a Miscellaneous Application No. 442/2004 in the Court of Learned District Judge, Pune in Regular Civil Appeal No. 451 of 1999. This Miscellaneous Civil Application No. 442/2004 also came to be dismissed. The applicant, has filed Writ Petition No. 2376 of

2006 challenging the dismissal of Miscellaneous Civil Application No. 442/2004. The learned counsel for the applicant states that notice is issued in this writ petition.

3. The Judgment and decree passed in Regular Civil Appeal No. 451 of 1999 is dated September 11, 2003. The applicant, wishes to file Second Appeal in this Court, subsequently and in this process delay is occurred. Office note shows that such delay is of 88 days', occurred in filing the Second Appeal. Learned Counsel for the applicant further fairly submits that this delay is more than 88 days' which is also obvious from the date of dismissal of Regular Civil Appeal No. 451 of 1999 on September 11, 2003.

4. From the record it is clear that the applicant was vigilant. The applicant on receipt of the certified copies filed Miscellaneous Civil Application No.

442/2004. The Applicant thereafter resorted to filing of the Second Appeal in this Court.

5. It is not the case of malafides on the part of the applicant. It is also not the case that the applicant is resorting to dilatory tactics. It is to be noted that father of the applicant is the original plaintiff in Regular Civil Suit No.1902 of 2002 and said suit is dismissed by the Trial Court. In this view of the matter, the delay occurred is satisfactorily explained and needs to be condoned.

6. In the result, Civil Application is allowed subject to costs of Rs. 500/- (Five Hundred only), to be remitted directly to the Maharashtra State Legal Services Authority within a period of 3 weeks. Delay occurred in filing Second Appeal stands condoned. The Civil Application is allowed in the above terms.

7. List the appeal for admission on 7th of October, 2006.

(S. B. DESHMUKH, J.)